

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:06CR16
	§	
KIRK ANTHONY DUKE (6)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 16, 2014, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Andrew Stover.

On October 19, 2006, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 114 months imprisonment followed by a five-year term of supervised release for the offense of conspiracy to manufacture, distribute or possess with intent to manufacture, distribute or dispense methamphetamine. Defendant began his term of supervision on April 20, 2010.

On September 25, 2014, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 616). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; and (3) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S.

Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On October 4, 2013, Defendant submitted a urine specimen that tested positive for marijuana. On February 17, July 10 and 21, 2014, and August 29, 2014, Defendant submitted urine specimens that tested positive for methamphetamine. On the aforementioned occasions, either Defendant admitted to the drug usage and/or the specimen was confirmed positive by Alere Laboratories, Inc.; and (2) Defendant was instructed to report to Pierce & Agnew, a substance abuse treatment agency located in Paris, Texas, for random urine collection. Defendant failed to report to Pierce & Agnew on May 16, June 30, July 7, August 1, 6, 11, 20 and 25, and September 8, 11 and 17, 2014, as directed.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the October 16, 2014 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of nine (9) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Fort Worth, Texas, if appropriate.

SIGNED this 21st day of October, 2014.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE